

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

S K F Industries, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation Tax :
under Article 9A of the Tax Law for the Years :
1975 - 1977.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon S K F Industries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

S K F Industries, Inc.
ATTN: Joseph S. Heron
1100 First Ave., PO Box 239
King of Prussia, PA 19406

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of April, 1982.

Annie D. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 23, 1982

S K F Industries, Inc.
ATTN: Joseph S. Heron
1100 First Ave., PO Box 239
King of Prussia, PA 19406

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SKF INDUSTRIES, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations:	:	
under Article 9-A of the Tax Law for the Years	:	
1975, 1976 and 1977.	:	

Petitioner, SKF Industries, Inc., P.O. Box 239, 1100 First Avenue, King of Prussia, Pennsylvania 19406, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1975, 1976 and 1977 (File No. 27910).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1981 at 9:15 A.M. Petitioner appeared by Joseph A. Heron, Assistant Treasurer. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly required petitioner SKF Industries, Inc. and its subsidiary SKF Warehouses, Inc. to file combined franchise tax reports for the years at issue.

FINDINGS OF FACT

1. For the 52-53 week years December 30, 1974 through December 28, 1975, December 29, 1975 through January 2, 1977 and January 3, 1977 through January 1, 1978, petitioner SKF Industries, Inc. ("SKF") filed separate franchise tax

reports. SKF Warehouses, Inc. ("Warehouses") was not encompassed in such reports nor did it separately file any reports.

2. As the result of a field audit conducted, the Audit Division required SKF and Warehouses to file combined reports for the years at issue. The Division recomputed the combined tax liability and issued three notices of deficiency, under date August 29, 1979, asserting additional franchise taxes due, scheduled as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/28/75	\$36,482.88	\$10,717.21	\$47,200.09
01/02/77	26,202.70	5,470.08	31,672.78
01/01/78	34,817.92	4,309.07	39,126.99

3. SKF is a corporation organized under the laws of Delaware and domiciled in Pennsylvania. Its business activities consist of the manufacture and sale of anti-friction products, such as ball and roller bearings. SKF serves three principal markets: original equipment manufacturers (e.g., automobile manufacturers), the export market and the distributor market. Petitioner has ten plants and twenty sales offices located throughout the United States, including one plant situated in Hornell, New York and a sales office in Tonawanda, New York.

4. On March 3, 1975, SKF incorporated Warehouses (under Delaware law) to stimulate and to more closely monitor sales in the distributor market. The distributor market is a very profitable one but differs from the other markets which SKF serves in that special pricing, faster servicing from inventories and more technical assistance by the sales representatives are required.

Petitioner transferred some of its real property and paid cash to Warehouses in exchange for all the subsidiary's stock.

5. All of Warehouses' purchases are made from the parent corporation. The subsidiary's receipts and cost of goods sold, as reflected on the consolidated Federal returns filed for the years at issue, were as follows:

<u>YEAR</u>	<u>RECEIPTS</u>	<u>COST OF GOODS SOLD</u>	<u>DIFFERENTIAL</u>
1975	\$47,441,522	\$34,379,657	\$13,061,865
1976	65,411,959	50,642,709	14,769,250
1977	67,807,681	51,646,462	16,161,219

6. During the years at issue, Warehouses was qualified and did business in the states of Georgia, Illinois, Nevada, Ohio and Texas. Of its total shipments of anti-friction devices, none originated in or were destined for New York. Warehouses owned and/or rented real and personal property in the previously named states.

7. On November 24, 1976, SKF incorporated McQuay-Norris, Inc. ("McQuay") under the laws of Delaware. McQuay is engaged in the manufacture and sale of automotive products and serves the same three markets as does its parent. McQuay neither requested nor was compelled to file a combined New York report with SKF and Warehouses.

8. SKF, Warehouses and McQuay have common officers but each has its own work force. The parent provides for its subsidiaries the various administrative services which they require and exercises managerial control over them.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corporation and its wholly-owned domestic subsidiary to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York. However, no combined report covering a foreign corporation not doing

business in New York may be required, unless the Tax Commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That during the first period at issue, the State Tax Commission provided by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
 - (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
 - (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;
 - (4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;
 - (5) Whether there were other substantial intercompany transactions among the constituent corporations.
- Former 20 NYCRR 5.28(b).

The essential elements of these factors have been carried over into the regulations which were effective for the taxable years 1976 and 1977, and which provide, in pertinent part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

- (1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
 - (2) there are substantial intercorporate transactions among the corporations."
- 20 NYCRR 6-2.3(a).

The mandatory language of the regulation takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations, and whether there were substantial intercorporate transactions among the

corporations. Matter of Annel Holding Corp. et al., State Tax Commission, August 2, 1973, determination confirmed, Annel Holding Corp. v. Procaccino, 77 Misc. 2d 886 (Sup. Ct. Albany Co. 1974); Matter of N. K. Winston Corp. et al., State Tax Commission, August 21, 1974; Matter of Alpha Computer Service Corporation et al., State Tax Commission, September 28, 1979; Matter of Montauk Improvement, Inc. and Montauk Country Club, Inc., State Tax Commission, September 28, 1979. These factors must be given particular emphasis, although all five factors of former 20 NYCRR 5.28(b) must be considered.

C. That the Audit Division properly required petitioner to file combined franchise tax reports including Warehouses. Notwithstanding that Warehouses is a foreign corporation which does no business in this state, it purchases its entire inventory from SKF. Subdivision 4 of section 211 expressly empowers the State Tax Commission to require a combined report because of intercompany transactions, in order to properly reflect tax liability under Article 9-A. Moreover, as demonstrated by their common officers, the managerial control exercised by the parent and the administrative support provided by the parent, the two corporations are part of a unitary business. Wurlitzer Co. v. State Tax Commission, 35 N.Y.2d 100 (1974).

D. That the petition of SKF Industries, Inc. is hereby denied, and the notices of deficiency issued August 29, 1979 are sustained in full.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

James H. Tuck
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark Smith
COMMISSIONER